

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

MICHAEL W. LUBBS,

Plaintiff,

vs.

**Civil Action No. 2:07 CV 59
(Maxwell)**

**MICHAEL J. ASTRUE,
COMMISSIONER OF
SOCIAL SECURITY,**

Defendant.

ORDER

It will be recalled that the above-styled social security appeal was instituted on July 31, 2007, with the filing of a Complaint by the Plaintiff, Michael W. Lubbs.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Rule 83.12 of the Local Rules of General Practice and Procedure.

On December 5, 2007, a Motion For Summary Judgment was filed on behalf of the Plaintiff, and on January 4, 2008, a Motion For Summary Judgment was filed on behalf of the Defendant.

On April 9, 2008, Magistrate Judge Seibert entered a Report And Recommendation (Docket No. 13) wherein he recommended that the Plaintiff's Motion For Summary Judgment be denied and that the Defendant's Motion For Summary Judgment be granted.

In said Report And Recommendation, the parties were directed, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e) of the Federal Rules of Civil Procedure, to file

any written objections thereto with the Clerk of Court within ten (10) days after being served with a copy of said Report And Recommendation. Magistrate Judge Seibert's Report And Recommendation expressly provided that a failure to timely file objections would result in waiver of the right to appeal from a judgment of this Court based thereon.

The docket in the above-styled civil action reflects that the Plaintiff's Objections To Report & Recommendations Of Magistrate Judge were filed on April 28, 2008. Thereafter, on May 8, 2008, the Defendant's Response To Plaintiff's Objections To The Report And Recommendation was filed herein.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on April 28, 2008, the Plaintiff filed Objections To Report & Recommendations Of Magistrate Judge. The Court has conducted a *de novo* review only as to the portions of the Report and Recommendation to which the Plaintiff objected. The remaining portions of the Report And Recommendation to which the Plaintiff has not objected have been reviewed for clear error.

The Court finds that the Plaintiff has not, in his Objections, raised any issues that were not thoroughly considered by Magistrate Judge Seibert in said Report And Recommendation. The Court is of the opinion that Magistrate Judge Seibert's Report

and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

ORDERED that Magistrate Judge Seibert's Report And Recommendation (Docket No. 13) be, and is hereby, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that:

1. The Defendant's Motion For Summary Judgment (Docket No. 12) is **GRANTED**;
2. The Plaintiff's Motion For Summary Judgment (Docket No. 10) is **DENIED**; and
3. The above-styled civil action is **DISMISSED** and **RETIRED** from the docket of this Court.

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, the Clerk of Court is directed to enter a separate Judgment Order affirming the decision of the Defendant.

The Clerk of Court is directed to transmit copies of this Order and the Judgment Order to counsel of record.

ENTER: June 23, 2008

/s/ Robert E. Maxwell
United States District Judge